IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 307 of 2005

GENA RAM
V/S
PANMAL

Mr. SS BHATI, for the appellant / petitioner

Date of Order : 18.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

By the impugned order, the learned trial Court has dismissed the appellant's application for leave to sue as an indigent person.

It is contended by the learned counsel for the appellant that the learned trial Court was in error in not finding the appellant to be an indigent person, inasmuch as, the learned trial Court has taken into account the fact, that the appellant had not disclosed the truck as one of his assets in the schedule appended with the application. According to the learned counsel, since the truck was a property, which was the subject matter of the suit, it is excluded, on the face of language of Order 33 Rule 1, and as such, the order of the learned trial Court is wrong.

I have considered the submissions, and find that the suit is only a suit for damages, resulting to the appellant, from alleged illegal deprivation of the possession of the truck by the defendant. Admittedly, the truck came back in possession of the appellant in the year 1997, and the suit is filed in the year 1999. In such circumstances, the subject matter of the suit is, only damages, said to have been suffered by the appellant, on account of illegal deprivation of the possession of the truck by the defendant, and the truck, as such, cannot be said to be a subject matter of litigation.

In that view of the matter, when the appellant has failed to disclose it to be one of his assets, the learned trial Court has

rightly found it to be a ground to reject the prayer of the appellant to be granted leave to sue as an indigent person. I may refer to a judgment of this Court in Maluram Hemraj Vs. Arjun Singh & Ors., reported in AIR 1972 (Raj.) 311 in this regard. It is a different story that the learned trial Court has considered the other circumstances also.

In such circumstances, I do not find any sufficient ground to interfere with the order rejecting the application. However, if the appellant so likes, he may submit court fees within a period of two months from today, and if the court fees is so submitted, the learned trial Court is directed to try the suit, and decide on merits.

The appeal is accordingly dismissed with the aforesaid liberty.

(N P GUPTA),J.

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